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Attorneys for Plaintiffs/Counter-Defendants

CDx Diagnostics, Inc. and

Shared Medical Resources. LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CDX DIAGNOSTICS, INC., and
SHARED MEDICAL RESOURCES, LLC,

Plaintiffs,

v.

HISTOLOGICS, LLC, POPLAR
HEALTHCARE PLLC, MATTISON
PATHOLOGY LLP, AND JOHN DOES 1-
30,

Defendants.

AND RELATED COUNTERCLAIMS

Case No. CV13-07909 DOC (RNBx)

**NOTICE OF SHARED MEDICAL
RESOURCES, LLC AND CDX
DIAGNOSTICS, INC.'S MOTION TO
DISMISS HISTOLOGICS, LLC'S
INVALIDITY, INEQUITABLE
CONDUCT, UNENFORCEABILITY
AND FRAUD AFFIRMATIVE
DEFENSES AND COUNTERCLAIMS**

[MEMORANDUM OF POINTS AND
AUTHORITIES, DECLARATIONS OF
PETER BERGER, DAN OLSEN, AND
MARK RUTENBERG, AND
PROPOSED ORDER SUBMITTED
CONCURRENTLY HEREWITH]

Date: April 21, 2014

Time: 8:30 a.m.

Courtroom: 9D

**TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR
ATTORNEYS OF RECORD HEREIN:**

PLEASE TAKE NOTICE that at 8:30 a.m. on April 21, 2014, or as soon thereafter as the matter may be heard in Courtroom 9D of this Court, located at 411 W. Fourth St., Santa Ana, California, Shared Medical Resources, LLC (“SMR”) and CDx Diagnostics, Inc. (“CDx”) will and hereby move this Court for an order, pursuant to Federal Rule of Civil Procedure 12 and this Court’s inherent powers, dismissing Histologics, LLC’s Third Affirmative Defense (Invalidity), Fifteenth Affirmative Defense (Inequitable Conduct and Fraud), Counterclaim Count 2 (Declaratory Judgment of Invalidity of U.S. Patent No. 6,258,044), and Counterclaim Count 3 (Declaratory Judgment of Unenforceability of U.S. Patent No. 6,258,044 (“the ’044 patent”)).

SMR and CDx base this motion, brought under Federal Rule of Civil Procedure 12(c), on the grounds that Histologics and those in privity with Histologics are barred, as previous owners and assignors of the ’044 patent, by the doctrine of assignor estoppel from claiming the ’044 patent is invalid or unenforceable.

SMR and CDx base this motion upon this notice, the following memorandum of points and authorities, all pleadings, records, and documents on file in this case, and such additional evidence and argument as may be properly introduced.

Pursuant to Local Rule 7-3, on or about January 23, 2014, counsel for Plaintiffs contacted counsel for Histologics to meet and confer regarding the basis for Plaintiffs’ motion. Counsel for Plaintiffs made several further efforts to confer with counsel for Histologics regarding this motion, but was unable to obtain Histologics’ agreement to the relief it now seeks.

Dated: March 21, 2014

ONE LLP

By: /s/ Nathaniel Dilger
Nathaniel L. Dilger, Esq.

LEVISOHN BERGER LLP

By: /s/ Peter Berger

Peter L. Berger (*Pro Hac Vice*)

*Attorneys for Plaintiffs and Counter-Defendants,
CDx Diagnostics, Inc. and
Shared Medical Resources, LLC*